

# The Corporation Journal

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## NOTICE.

The Corporation Journal will not be published in July and August. The September number will contain all matter collected since the date of this issue.

## DOMESTIC CORPORATIONS.

### ALABAMA.

**STOCKHOLDERS' LIABILITY ON UNPAID SUBSCRIPTIONS** may be enforced by the receiver of a corporation, even where the corporation has released the stockholders, as he represents the creditors as well as the corporation and is not confined to such actions as the corporation might bring. *Hundley v. Hewitt*, 71 So. 419.

### CALIFORNIA.

**FORFEITURE OF CHARTER.** The proclamation of the Governor declaring the forfeiture of the charter of a corporation for non-payment of franchise taxes is an essential step in the procedure for the forfeiture of such a charter. The original or certified copy thereof should be produced in evidence where it is claimed that a corporation has no right to sue because of forfeiture. Trustees of a defunct corporation may be substituted for the corporation and may maintain an action in its behalf, where its charter has thus been forfeited. *Kehrlein-Swinerton Const. Co. v. Rapken*, 156 Pac. 972.

**A SPECIAL MEETING OF STOCKHOLDERS** is not authorized to elect directors in the absence of a notice specifying that such election is one of the purposes of the meeting. A notice stating that the purpose of the meeting is "to transact such business as may come before said meeting" is not sufficient. *Dolbear v. Wilkinson*, 156 Pac. 488.

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**AN OPTION ON THE ENTIRE CORPORATE PROPERTY** without consent of stockholders is valid. Section 361a of the Civil Code providing that "no sale, lease, assignment, transfer or conveyance of the business, franchise and property as a whole, of a corporation, shall be valid without the consent of stockholders holding of record, at least two-thirds of the issued capital stock", does not include a mere option to purchase. *Bradford v. Sunset Land & Water Co.*, 157 Pac. 20.

### CONNECTICUT.

**CONTRACT FOR SALE OF STOCK SHOULD BE IN WRITING.** Defendants accepted an offer of plaintiff to sell out his interest in a corporation for \$550. No part of the purchase price was paid, no memorandum of sale was signed, the certificate of stock was not delivered but was at the request of the defendants retained by plaintiff in his safe. The defendants took exclusive possession and management of the business until its bankruptcy. Both parties were ignorant of corporation law and regarded the transaction as legal, but the Supreme Court of Errors holds that the plaintiff is not entitled to recovery of the purchase price of the stock. Such a contract is within the Statute of Frauds. To take the transaction out of the statute a delivery of the stock was necessary. The Court says: "It is important to corporate management that transfers of stock be made in an orderly manner. An observance of the requirements of the statute of frauds as interpreted by our court will accomplish this desirable end. It is as essential that a transfer of stock should be supported by written evidence as a transfer of goods." *De Nunzio v. De Nunzio*, 97 Atl. 323.

### KENTUCKY.

**RESIGNATIONS OF OFFICERS AND DIRECTORS ARE NOT EFFECTIVE UNTIL ACCEPTED.** Section 551, Ky. Statutes, provides that directors shall continue as such "until their successors are respectively elected and qualified." In the instant case all the officers and directors addressed a written resignation to the company, but there was "no record made in the books as to the tendering of their resignations; nor was there ever any acceptance of theirs recorded on the corporation books or otherwise. Until there is such an acceptance they continued to remain directors." *Lincoln Court Realty Co. v. Kentucky Title S. B. & T. Co.* 185 S. W. 156.

**ULTRA VIRES.** Where a contract is ultra vires, and does not conflict with any interest of the state, and is not against any principle of public policy and where only the interests of the stockholders are involved, the corporation cannot rely upon this defense, nor can it be made to do so by the stockholders when all of them consented that the contract be made. *Lincoln Court Realty Co. v. Kentucky Title S. B. & T. Co.*, 185 S. W. 156.

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### MANITOBA.

A NOTE SIGNED INDIVIDUALLY cannot be shown by a managing director to have been intended as that of the corporation. The defendant in this case endeavored to show that he intended to use a rubber stamp, printing the name of the company above his own. The ordinary rule, that oral evidence is inadmissible to contradict or vary an instrument in writing, is applicable. *Lindsay-Walker v. Hilson*, 27 D. L. R. 233.

### MISSOURI.

THE ANNUAL REPORT, Registration Statement and Anti-Trust Affidavit required by statute should be filed in July. Blank forms of this report and affidavit have been sent out by the Secretary of State to domestic and foreign corporations registered in his office.

### NEW JERSEY.

**TRANSFER OF ASSETS AS AN ENTIRETY.** A New Jersey corporation decided to abandon its New Jersey charter and to operate in the future under a Delaware charter in order to escape the burden of the New Jersey annual franchise tax. A Delaware corporation was formed with the same name and capitalization as the New Jersey company. The directors of the New Jersey company by resolution then authorized a transfer of the entire assets of the New Jersey company to the Delaware corporation in consideration of the latter assuming the debts of the former and issuing its capital stock to the several stockholders of the New Jersey corporation, upon such stockholders surrendering their New Jersey stock. A stockholders' meeting then approved the plan and the transfer of assets was made and all stockholders of the New Jersey corporation, except two, surrendered their New Jersey stock and accepted an equal number of shares in the Delaware corporation. The former board of directors of the New Jersey corporation were made directors of the Delaware corporation, and that corporation thereafter operated without change or disturbance of the business or its methods.

The Court of Chancery of New Jersey holds that there is no legal justification to support the proceedings notwithstanding that the charter of the New Jersey company contained a provision reading as follows:

"With the consent in writing and pursuant to the vote of the holders of a majority of the stock issued and outstanding, the directors shall have power and authority to sell, assign, transfer or otherwise dispose of the whole property of this corporation."

This provision, the court says, cannot be understood as authorizing the transfer of the assets *without an adequate consideration moving to the New Jersey corporation*. The stock of the Delaware corporation was the primary consideration of the transfer or sale, *but that stock did not pass to the treasury of the New Jersey corporation*. The contemplation of the transaction as in general effect a delivery of the stock of the Delaware corporation to the New Jersey corporation and a dis-

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tribution of that stock to the several stockholders of the New Jersey corporation contributes nothing to its vitality. The fact is that the New Jersey corporation was abandoned and its creditors were left to look to the Delaware corporation for payment. The court decided that no relief could be administered through a decree setting aside the transfer or declaring the transaction void or holding the directors responsible, since the Delaware corporation and the directors were out of the jurisdiction of the court. Therefore the court concluded the only practicable relief was to appoint a receiver of the New Jersey corporation to pursue such remedies as are open to him to restore to the New Jersey corporation for the benefit of its creditors and stockholders the property and property rights which have been unlawfully withdrawn from it. *Dalsheimer v. Graphic Arts Co.*, 97 Atl. 497.

### NEW YORK.

**THAT THE SECRETARY WAS NOT AUTHORIZED** to sign a contract on its behalf may be shown by a corporation. Neither the secretary nor treasurer has inherent power by virtue of his office to contract for the corporation. *Klein v. Louis Barnett Sons, Inc.*, 158 N. Y. Supp. 627.

**AUTHORITY OF OFFICERS.** Where two officers of a corporation are the only stockholders they occupy substantially the relation of partners and either one may bind the corporation without the usual authority from the board of directors. *Carney v. Penn Realty Co.*, 159 N. Y. Supp. 273.

**PAYMENT FOR UNISSUED AS DISTINGUISHED FROM TREASURY STOCK**, cannot be enforced by the corporation against one to whom a certificate was delivered at the instance of a third person. There was no subscription for the stock. The contract was between the person to whom the certificate was delivered and the other person who requested it. *Sanders v. Proctor*, 158 N. Y. Supp. 433.

**SYNDICATE MANAGERS MAY SUE** the subscribers to bonds of a corporation on their subscription as trustees of an express trust under Section 449 of the Code of Civil Procedure. *Gallogly v. Whitmore*, 158 N. Y. Supp. 830.

**CONTRACT TO PURCHASE STOCK MAY NOT BE RESCINDED FIVE YEARS** after it is broken by the corporation in failing to fulfill its part of the agreement to purchase cement from the subscriber. Rescission of a contract must be made upon discovery of the fact justifying it, or at least within a reasonable time thereafter. *Clarke v. Borough Asphalt Co.*, 157 N. Y. Supp. 581.

### NORTH CAROLINA.

**THE BLUE SKY LAW** (Revisal Sec. 4805, as amended by Chapter 156, Laws 1913) is constitutional. A foreign corporation offering fig orchards for sale and agreeing to plant fig cuttings and to cultivate them, is an "investing company" and is offering "evidence of property" so as to require a license under the law. *State v. Agey*, 88 S. E. 726.

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### OHIO.

**THE FORMALITIES OF INCORPORATION** prescribed by Secs. 8632, *et seq.*, of the General Code must be fully observed in order to create a corporation. The Supreme Court of Ohio refuses to recognize the existence of a corporation where ten per cent. of the stock subscribed was not actually paid in by the subscribers, and other formalities were neglected. The importance of careful attention to the details of incorporation is emphasized by the opinion in this case. Parkside Cemetery Ass'n. v. Cleveland B. & G. Lake T. Co., 112 N. E. 596. The federal court in Ohio, on the other hand, has recently held that the filing of articles of incorporation, followed by the transaction of corporate business, constitutes at least a *de facto* corporation for the purpose of suing or being sued, although the further provisions have not been complied with. Kardo Co. v. Adams, 231 Fed. 950.

**DIRECTORS MUST BE BONA FIDE STOCKHOLDERS.** Persons having no interest in the stock, but fraudulently and collusively receiving the transfer of a share to qualify them, are not eligible; votes cast for a person not eligible do not even make a *de facto* director. Parkside Cemetery Ass'n. v. Cleveland B. & G. Lake T. Co., 112 N. E. 596.

**DE FACTO CORPORATIONS.** Three corporations, each the owner of patents covering parts of automobiles, capable of conjoint use, in order to better protect their rights under the patents, promoted the organization of a fourth corporation to hold title to the patents, to grant licenses, and to prosecute infringers. The incorporators did not intend to become, and did not become, beneficially interested in the corporation; but each subscribed for one share of stock, which was paid for. They elected themselves officers and directors, and afterward resigned, one by one, and elected in their places officers and directors of the promoting corporations, to whom they assigned their certificates of stock. The remaining stock was subscribed and paid for by such three corporations, which also paid for the stock issued to the incorporators and assigned their patents to the new corporation. The organization was in form in compliance with the laws of the State and was in good faith. The federal court held, in a suit by the new corporation for infringement, that complainant was a corporation *de facto*, if not *de jure*, and that the legality of its organization could not be attacked by defendant. Kardo Co. v. Adams, Circuit Court of Appeals, Sixth Circuit, 231 Fed. 950. See preceding paragraphs for opinion of the State court in a similar case.

### OKLAHOMA.

**TRANSFER OF SHARES.** Section 1284, Snyder's Comp. Laws, 1909, provides that a transfer of corporate stock is not valid except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer. A corporation which has issued a stock certificate, which itself provides that it is only transferable on the corporate books, should not

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reissue a certificate in its place without surrender of the original. Where it has thus reissued stock it is liable in an equity suit to transfer the original certificate to a *bona fide* holder thereof. *Litchfield v. Henson Oil Co.*, 157 Pac. 137.

**THERE IS NO LIABILITY OF A PURCHASING COMPANY FOR THE DEBTS OF A SELLING CORPORATION** unless (a) there be an agreement to assume such debts; (b) the circumstances surrounding the transaction warrant a finding that there was a consolidation of the two corporations; or (c) the purchasing corporation is a mere continuation of the selling corporation; or (d) the transaction was fraudulent in fact. *Ezzard v. State Nat. Bank*, 157 Pac. 127.

**RATIFICATION OF CORPORATE CONTRACTS** is effected by the board of directors in paying rent and interest. *Anchor Steam Bottling Works v. Baumle*, 155 Pac. 518.

### SOUTH CAROLINA.

**PERSONAL LIABILITY OF DIRECTORS FOR NEGLIGENCE** in discharge of their duties as directors is not exonerated because they receive no compensation for their services. On the other hand, the degree of care which they owe to the corporation is not enhanced by their high character and standing in the business life of the community, though this increases the credit of the corporation. *Virginia-Carolina Chemical Co. v. Ehrich*, 230 Fed. 1005.

### TENNESSEE.

**THE NAME "TINDLE COTTON COMPANY"** was *prima facie* that of a corporation and not that of a partnership. *Peniscot County Bank v. Central State National Bank*, 185 S. W. 702.

### UTAH.

**PROPERTY IN PAYMENT FOR SUBSCRIPTIONS.** Sec. 316, Comp. Laws 1907, provides that where subscriptions to capital stock consist in whole or in part of property, there must appear in the articles of incorporation a description of the property so taken, with a statement of the fair cash value thereof supplemented, except in the case of mining and irrigation corporations, by affidavits. Property will nevertheless be regarded as payment for stock, where the statute is not complied with and the articles of incorporation make no mention of such property. The Court says in part: "If the statute is followed a corporate creditor may not attack property payments for subscriptions except for fraud, although the corporation is insolvent. Under statutes like ours where the statute is not followed and the corporation is insolvent, such a creditor may, however, assail property payments without claiming fraud by merely alleging that the subscriptions were not paid in money and are not fully paid, and where such is the fact the burden is cast upon the stockholder who has paid his subscription in property to show that the property contributed by him

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was worth in cash the amount for which he received credit upon his subscription." The Court further states that it is committed to what is, by the text-writers, called the "true value rule" that evidence respecting value should be clear and convincing and that the "market value" of the property at the time it is turned over to and accepted by the corporation is the amount to which the subscribers are entitled to credit. The contention that the subscribers should receive credit only for the amount they paid for the property was dismissed by the court as finding no support in law, equity or reason. *Union Pac. R. Co. v. Blair*, 156 Pac. 948.

### WEST VIRGINIA.

**PROPERTY AS PAYMENT FOR SUBSCRIPTIONS.** Acts Gen. Assem. W. Va. 1882, C. 96, Sec. 24 (Sec. 2857 Hogg's West Virginia Code) provides that stock may be issued by mining and manufacturing corporations in payment of real and personal property, and, "in the absence of actual fraud in the transaction, the valuation of the property so purchased shall be conclusive; but it shall be the duty of the corporation to have its minutes or other permanent records to show with reasonable detail the items of the property in payment for which stock or bonds were issued." Though its stock is thus issued in a large amount and a mining company suffers a heavy failure, the statute is controlling. \* \* \* The court has no right to substitute its judgment for that of the law-making power, because in the light of after events a hardship on creditors may result and they may not be able to secure payment of their indebtedness from the corporation." *Maryland Rail Co. v. Taylor* 231 Fed. 119.

### FOREIGN CORPORATIONS.

#### KANSAS.

**SUIT IN WRONG NAME.** The New Century Zinc & Mining Company, a Delaware corporation, was sued as the "New Century Mining Company" and described in the petition as a Kansas corporation. It was too late after trial and judgment to raise any objection. The judgment is as valid as if rendered against the company in its right name. *American Surety Co. v. Maryland Casualty Co.*, 155 Pac. 59.

#### MAINE.

**SERVICE OF PROCESS** upon the duly appointed agent of a foreign corporation gives the federal, as well as the state courts, jurisdiction, but service upon the superintendent of a mill belonging to a foreign corporation in the state, when it had appointed another as agent for service of process, and still another person was in charge of its business in the state, is invalid in an action against the corporation. *Boulbee v. International Paper Co.*, 229 Fed. 951.

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### OREGON.

**INTERSTATE COMMERCE AND "DOING BUSINESS."** A Vermont corporation sold cream separators and dairy accessories in Oregon by sending agents to take orders from dealers in the state. These orders were sent to the home office in Vermont, but were filled from the warehouse of the Oregon Transfer Co. in Portland, to which carload lots of goods were sent for storage. Though the goods were open to inspection there, the warehouse company had no authority to deliver any goods except on direct mail or telegraphic orders from Vermont. In an action by the corporation on a promissory note in a state court, evidence was adduced to the effect that not all the orders were wired back and that many times a salesman "would go to the warehouse and open a box and 'rob a cream separator' of the part desired such as a bowl, and when they got a replacement of these bowls they would replace them." Whether the corporation is thus engaged in interstate commerce or is "doing business" in the state so as to render its failure to qualify as a foreign corporation a bar to the action, was properly submitted to the jury. The State Supreme Court, among other things, says: "In order to constitute doing business within this state by plaintiff, its agent must have had ample authority to transact some substantial portion of plaintiff's business; that is, make complete sales here, and not merely take orders. \* \* \* We do not think that the 'robbing of a separator' or the borrowing of fixtures from goods in the original crates or boxes by agents, to be replaced afterwards, without the sanction of the plaintiff being shown, would, of itself, change the nature of the transaction from interstate to intrastate commerce. The real character of plaintiff's business would control in the premises. If it maintained an office and stored its goods in a warehouse in the state, and, through its agents, made sales direct from such repository, no doubt it would be doing business within the state as contradistinguished from commerce between states." *Vermont Farm Mach. Co. v. Hall*, 156 Pac. 1073.

### TEXAS.

**AUTHORITY TO DO BUSINESS MUST BE PROVED** as well as alleged by a foreign corporation in suing to recover for the price of goods sold by it in the State. *Rexall Drug Co. v. Butler Bros.*, 185 S. W. 989.

### UNITED STATES COURTS.

**SERVICE OF PROCESS UPON THE MANAGING DIRECTOR OF A BRITISH CORPORATION** in the United States on a pleasure trip is void in an action against the corporation, although he took up certain business matters while here. As to whether a corporation is conducting business and has a sufficiently defined place of conducting business to justify the United States courts in holding that it has been found and is liable to service within the district, is primarily a question of fact. *Smithson v. Roneo*, 231 Fed. 349.

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### TAXATION.

#### COLORADO.

**THE FRANCHISE TAX LAW AS APPLIED TO DOMESTIC CORPORATIONS IS CONSTITUTIONAL.** Sec. 64 of Revenue Act of 1902 imposing a tax on domestic corporations having a capital stock of \$25,000 or over of two cents per \$1,000 of their capital is separable from Sec. 65 of the same act which lays a tax upon foreign corporations. Section 65 has heretofore been declared by the United States Supreme Court to be unenforceable against certain foreign corporations (American Smelting Co. v. Colorado 204 U. S. 103). But the fact that a foreign corporation is thus relieved does not affect the rule as to domestic corporations. The state may place different burdens upon domestic than upon foreign corporations. Colorado & S. Ky. Co. v. People, 156 Pac. 1095.

#### IDAHO.

**INHERITANCE TAX ON STOCK OF FOREIGN CORPORATION OWNED BY NON-RESIDENT.** The State of Idaho, according to its Supreme Court, is without right to exact an inheritance tax with respect to stock held by the estate of E. H. Harriman, of New York, in the Union Pacific Railroad Company, a Utah corporation, which owned the stock of the Oregon Short Line, another Utah corporation, operating in Idaho. An inheritance tax is not a property tax, but is a bonus exacted by the state for the privilege granted by its laws of inheriting property on the death of the owner. In this case the State of Idaho granted no privilege of inheritance nor has it been, nor will it be, necessary to ask its permission or invoke the aid of its laws to transfer the property in question. State v. Dunlap, 156 Pac. 1141.

#### KENTUCKY.

**TAX ON SHARES OF FOREIGN CORPORATIONS.** Sec. 4085 of the Kentucky statutes, as construed by the courts of that State provides that wherever a corporation owns property within the State and uses it *bona fide* in its business, be it ever so little or insignificant a proportion of its entire property, payment of taxes thereon by the corporation exempts the stockholder from taxation on his shares. But this does not exempt the stockholder of a foreign holding company which holds the stock of corporations owning property in the State and paying taxes thereon. Commonwealth v. Muir, 186 S. W. 194.

#### MASSACHUSETTS.

**FRANCHISE TAX.** In determining the amount of franchise tax to be levied on a corporation, national bank shares are not treated as securities which, if owned by a natural person resident in the Commonwealth, would be exempt from taxation. A. J. Tower Co v. Commonwealth, 111 N. E. 966.

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### MINNESOTA.

**LICENSE FEE FOR DOING BUSINESS.** A foreign corporation upon entering the State is required to pay a fee of \$50 for the first fifty thousand dollars or fraction thereof of the proportion of its capital stock represented by its property located and business transacted in the State, and a further sum of \$5 for each additional ten thousand dollars or fraction thereof of such proportion of capital stock. It is also provided that upon increasing its capital stock the foreign corporation shall pay to the State \$5 for every ten thousand dollars or fraction thereof "of such increase of said proportion of capital stock of such corporation."

The court construes this statute to require a foreign corporation, upon increase of its capital stock to pay an additional fee based upon the proportion of the increase used in the State and upon that only. The court also remarks upon the fact that there is no provision in the statute for an increase of the fee to be paid when the proportion of capital employed in the State is increased after the initial fee has been paid. *State v. Schmahl*, 157 N. W. 1082.

### NEW JERSEY.

**THE ANNUAL FRANCHISE TAX** on domestic corporations falls due July 1. If unpaid interest is thereafter added at the rate of one per cent. per month.

### NEW YORK.

**FRANCHISE TAX.** A domestic railroad corporation which has leased its railroad to a foreign railroad company, but has received no rent and transacted no business except to keep alive its corporate existence by the election of officers, is not liable for a franchise tax for transacting business. *People v. Sohmer*, 217 N. Y. 443.

**FRANCHISE TAX.** A corporation engaged in pasteurizing milk is not engaged in "manufacturing," so as to come within the provisions exempting manufacturing companies. *People v. Sohmer*, 112 N. E. 755.

**RATE OF FRANCHISE TAX.** The tax law, Sec. 182, provides that where a dividend in excess of 6% has been declared upon capital stock the rate of taxation shall be one-fourth of a mill for each one per cent. of dividends. Where a stock dividend is declared this rate applies, as the stock dividend stands upon the same basis as a cash dividend. On the stock issued as a dividend the rate is three-fourths of a mill, no dividend thereon having been declared. *People v. Sohmer*, 112 N. E. 755.

### PENNSYLVANIA.

**BONUS TAX ON DOMESTICATION.** Under the Act of June 9, 1881, a foreign corporation may become "domesticated" under the laws of Pennsylvania.

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This procedure amounts to a re-incorporation under the laws of the State. At the time of domestication a bonus tax of one-third of one per cent. on the capital authorized must be paid to the State. A foreign corporation which has previously obtained authority to do business in Pennsylvania and paid the bonus tax on the amount of capital employed in the State is not entitled, upon domestication, to any allowance for the bonus tax so paid, but must pay again upon the full amount of its authorized capital. Atty. General's opinion, 2 Dept. Reports 1199.

**CAPITAL STOCK TAX.** The capital stock reports may be filed at any time up to and including the last day of March without penalty. The statute calls for the report in January or February, but the penalty provision applies only for default after March 31. Hence the Attorney-General holds that reports filed in March should be received without penalty. 2 Dept. Reports 1194. The Auditor General may extend the time for filing reports for a period not exceeding thirty days after the last day of February. This opinion of the Attorney General, however, seems to obviate the necessity of asking for an extension of time, since no penalty applies when a return is filed in March.

**A LIMITED PARTNERSHIP** is engaged in manufacturing where its business consists in dyeing raw material and subjecting it to the necessary processes and treatment to enable it to absorb the coloring matter and produce the desired color in material or yarns made therefrom. Its capital so engaged is, therefore, exempt from taxation on its capital stock. In Commonwealth v. G. W. Littlewood & Sons, 19 Dauphin County Reporter, 202, a settlement for tax on the capital stock made by the State accounting officers was reversed, insofar as it was shown that the capital was engaged in manufacturing in the State. It appeared, however, that the business had accumulated a large bank balance which had not been distributed owing to a disagreement among the partners. It was found that this bank balance was not engaged in manufacturing, and was, therefore, taxable.

**THE MERCANTILE TAX** imposed on retail vendors under the Act of May 2, 1899, P. L. 184, must be paid by a milk corporation which distributes its product to customers from wagons the drivers of which have routes and customers' lists and who keep customers accounts and remit proceeds to the corporation. It was found immaterial that sales were made away from the place of business since the Act imposes the tax not on the sales but on dealers having permanent places of business in the county. Com. v. Abbotts Alderney Dairies, 62 Superior Court 451.

### WISCONSIN.

**STATE INCOME TAX—DEDUCTION FOR ORE DEPRECIATION.** A mining corporation operating under a lease made a deduction in its income tax return of \$16,173.58 for royalties paid to the lessor. It is not entitled to a further reduction of \$65,000 for depreciation in the ore body. A leasehold interest is not equivalent to ownership for purposes of income taxation. Klar Piquett Mining Co. v. Town of Platteville, 157 N. W. 763.

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**STATE INCOME TAX.** The income tax law of Wisconsin provides for the levying of a tax on incomes received during the year. One who purchased stock prior to the incidence of the tax and sold it at a profit after the incidence of the tax could not be taxed on the profits in the transaction where it was shown that the value of the stock at the time the law was passed was equal to its value when sold. The court says: "When the income tax law was first passed in 1911 the stock in question was held by the plaintiff, and was then of the value of \$214,000 [the price at which it was sold]. This fact is admitted to be established. In the judgment of the court all of this was capital, or, in other words, property. Its status was fixed. No part of it could be made into income by legislative enactment." State v. Nygaard, 158 N. W. 87.

## TRUSTS AND MONOPOLIES.

### TEXAS.

**CONTRACTS FOR EXCLUSIVE HANDLING OF GOODS.** The Court of Civil Appeals of Taxes at Galveston holds that Article 7798 of Vernon's Sayle's Civil Statutes does not restrict the right of a brewery leasing premises for saloon use to stipulate that tenants shall not buy beer of competitors. Celli & Del Papa v. Galveston Brewing Co., 186 S. W. 278. The Court of Civil Appeals at Dallas recently held such a contract was void under the statute. See Corporation Journal, p. 101.

## UNITED STATES SUPREME COURT.

**AMENDMENT TO RULE 37.** On June 12th it was ordered by the Court that Rule 37 of the Court be amended by adding the following section:

4. In any case where the time for presenting a petition for certiorari is expressly limited by statute and where the Court has adjourned for the term, the petition may be presented during such adjournment and within the period prescribed, by filing it, together with the printed record and briefs, in the office of the clerk, and such filing shall have the same effect as a presentation open Court.

The court adjourned on June 12 for the October, 1915, term. 547 cases were disposed of, leaving 506 not disposed of—the lowest number in seven years.

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### INCOME TAX.

#### RULINGS AND REGULATIONS.

Since our last issue (See Corporation Journal, p. 193), the Treasury Department has published a letter stating that collectors have no authority to arbitrarily limit depreciation on buildings to a fixed percentage of the value but the allowance on buildings should be reasonable and is computed in the same way as on other physical property (p. 397).

It is held that in order to obtain a deduction for depletion of natural resources the amount claimed must be charged off on the books and reflected in the annual balance sheet (p. 398).

A Treasury Decision holds that partners cannot claim deductions because income received by the partnership was from national, state or municipal bonds or from dividends. While such income accruing to an individual may be exempt from tax its character is changed in passing through the partnership and is merely income from a partnership when it accrues to the partners (p. 399).

A ruling on the responsibilities of resident agents for non-resident alien owners of domestic stocks and bonds appears on page 400.

A federal district court has held that the tax on income from export business is not unconstitutional as a tax on exports (p. 401).

A letter on page 402 specifies the extent to which deductions for business expenses, losses, etc., may be claimed by a foreign corporation deriving its income in this country solely from stocks and bonds.

(NOTE.—The page references are to our Income Tax Service, in which these rulings and regulations are printed in full).

### WAR TAX.

#### RULINGS AND REGULATIONS.

The Treasury Department has permitted insurance companies to forward stamps with renewals to insurance policies with instructions to the insured to affix and cancel the stamps if the policy is accepted. This is to avoid the necessity of sending cancelled stamps to the Treasury Department for redemption as is required if the stamps are attached to the policy when issued and the policy is thereafter not accepted by the insured (p. 347).

Two further rulings on stamp requirements in the case of transfers of stock bought and sold through brokers have appeared (pp. 348 and 350).

Treasury Decision 2078 has been modified to provide for the stamping of wines sold for consumption on and off the premises of retail liquor dealers (p. 349).

(NOTE.—The page references are to our War Tax Service, in which these rulings and regulations are printed in full).

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### FEDERAL RESERVE.

#### RULINGS AND REGULATIONS.

The inauguration of the new system of clearing and collection of checks has been postponed to July 15th, on which date the plan will become generally effective (p. 508).

The petition of certain banks in Wisconsin to be transferred from the Minneapolis to the Chicago Federal Reserve District was denied without prejudice (p. 508).

Informal rulings have been issued relative to loans and discounts, direct loans on farm lands by federal reserve banks, purpose of the tax on federal reserve notes, loans on real estate other than farm lands, federal reserve bank notes and federal reserve notes (pp. 509 to 511).

The Law Department has published an opinion on re-discounts on commercial or business paper (p. 512).

A statement has been issued that the federal reserve banks have purchased more than \$25,000,000 of bonds bearing the circulation privilege in the open market and are not required under the terms of the law to buy any more such bonds through the Treasurer of the United States during this calendar year (p. 513).

The fourth semi-annual assessment on federal reserve banks to pay expenses of the Federal Reserve Board is payable in two instalments, on July 1st and September 1st, respectively (p. 515).

(NOTE.—The page references are to our Federal Reserve Act Service which reports in full all rulings, regulations and opinions of the Federal Reserve Board.)

### TRADE COMMISSION.

No rulings or regulations have been issued by the Trade Commission since our last issue.

### CONGRESS.

**PROPOSED REVENUE LAW.** A bill to increase the revenue, and for other purposes, introduced in Congress will, if enacted in its present form, increase the rate of the normal income tax on individuals and corporations to 2% and the additional tax on individuals to a maximum of 10%. The bill also makes many changes in the language of the income tax law, in fact the entire act is redrafted. Income is defined more in detail, a limited deduction for losses not incurred in trade is allowed,

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returns will be required from all persons having a net income of \$3,000 from every source, including dividends and income on which the tax has been withheld. Non-resident aliens are made taxable on income "from all sources within the United States" and the deductions to which they are entitled are set out in full. The personal exemption of \$4,000 is allowed to every head of a family, whether married or not. Collection at the source is retained, but collection of the 2% normal tax shall not begin until January 1, 1917. The tax is made payable on June 15, instead of June 30 as at present. Other changes, too numerous to mention within the scope of this article, appear throughout the law.

An inheritance tax, known in the law as an estate tax, is included in this measure as is also a tax on munition manufacturers. Miscellaneous taxes are imposed on fermented liquors, wines, liqueurs and cordials. The special taxes on bankers, brokers, theatres, circuses, etc., and on dealers and manufacturers of tobacco are to be retained, with changes in some of the rates or methods of computation. In other respects the so-called war tax of October 22, 1914, will be wiped out, including the stamp taxes on stocks, bonds and deeds. A tariff on dyestuffs is prescribed and a tariff commission is provided for to investigate the customs laws and make reports thereon. The act also contains a provision making it unlawful to sell imported articles below the actual market value or wholesale price in the principal markets of the countries from which they are imported.

Copies of this bill may be obtained from our legislative department at the price of \$1.00.

**ARMY REORGANIZATION LAW.** The most comprehensive measure looking to military preparedness that has ever been passed by Congress was signed by President Wilson on June 3. The law is divided into four parts: First, the Regular Army; second, measures for creating reserves of officers and men; third, the National Guard; and, fourth, measures for preparedness in materials. Section 111 gives the President very broad powers in drafting the National Guard and National Guard Reserves into Federal service. This power has already been exercised in the Mexican situation.

Copies of this law may be obtained from our Legislative Department for 50c.

## NEW PUBLICATIONS.

**THE PROPOSED INCOME TAX LAW**, reference to which is made as a part of the revenue bill noted above, has been published by us in pamphlet form. Copies may be obtained without charge at any one of our offices.

**The Corporation Journal** should be kept in a binder for convenient reference. We furnish a substantial binder for \$1.50.

## THE NEW INCOME TAX LAW.

A bill to amend the federal income tax law has been introduced in Congress.

The rate of tax will be increased and many changes will be made in the method of computing gross income, deducting losses, making returns and withholding the tax at the source.

New regulations will be issued to aid in the administration of the amended law.

Knowledge of the present law and regulations will be insufficient to meet the problems under the amended law.

At this time our Income Tax Service meets the need as no other means of information can.

It reports with utmost promptness the text of every amendment, regulation and ruling.

It presents the last word of the Treasury Department to our subscribers.

It will assist you, as it has assisted many others, to understand a complex system of taxation.

Write our nearest office for further particulars.

A copy of the proposed law may be obtained without charge from any one of our offices.

